

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:MWD:MIL:TL-N-LO-6491-99
GWBezold

date: August 21, 2000

to: Shelby Kupczyk, Large Case Exam Group Manager, Group 1102 (920)

from: District Counsel, Midwest District, Milwaukee

subject: Identifying the Appropriate Entity to Sign Forms 872 and the
Appropriate Format for Forms 872, RARs, and Other Agreements

Taxpayer: [REDACTED] and Subsidiaries

Years: [REDACTED] and [REDACTED]

This memorandum responds to your request for our advice regarding the stated question and taxpayer.

ISSUES

1. Who is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] ([REDACTED]) consolidated group for its [REDACTED] taxable year?

2. What is the appropriate language to use on Forms 872, RARs, etc., for the [REDACTED] consolidated group for its [REDACTED] taxable year?

3. Who is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] ([REDACTED]) (a partnership that checked the box to be treated as a corporation) consolidated group for its [REDACTED] taxable year?

4. What is the appropriate language to use on Forms 872, RARs, etc. the [REDACTED] consolidated group's [REDACTED] taxable year?

CONCLUSIONS

Our conclusions are set forth below, subject to the following caveat/recommendation. Our conclusions presume the requirements of new I.R.C. § 6501(c)(4)(B), requiring the Service notify the taxpayer of its right: 1) to refuse to extend the period of limitations; 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of

time, have been satisfied. If not, then you need to take certain action. As you are aware, I.R.C. § 6501(c)(4)(B) can be satisfied by informing taxpayers, either orally or in writing, of their right to refuse to consent to an extension of the statute of limitations or to limit such an extension to specific issues or to a specific time frame. Letter 907(DO) (Rev. 2-2000) or Letter 907(SC) (Rev. 12-1999) (see I.R.M. 4541.1 and I.R.M. 121.2.22.3) should be sent to taxpayers when securing a consent to extend statutes of limitations. You should also provide taxpayers with a copy of Publication 1035, Extending the Tax Assessment Period (Rev. 12-1999) when requesting a statute of limitations extensions and send Letter 967 (Rev. 12-1999) (see I.R.S. RRA 98 National Resource Center Question 203). The actions you have taken to assure that the requirements of new I.R.C. § 6501(c)(4)(B) and the above steps have been met should be documented.

1. The proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] consolidated group for its [REDACTED] taxable year is [REDACTED].

2. The proper language to use on Forms 872, RARs, etc. for the [REDACTED] consolidated group's [REDACTED] taxable year "[REDACTED] ([REDACTED]), as alternative agent for the [REDACTED] consolidated return group pursuant to Temp. Treas. Reg. § 1.1502-77T.*" Put an asterisk immediately thereafter (as shown). At the bottom of the page, the following language should be added (including the asterisk):

*This is with respect to the consolidated tax liability of the [REDACTED]. ([REDACTED])
[REDACTED] consolidated return group for the taxable year [REDACTED].

The forms may be signed by either of the partners in [REDACTED] or an authorized member of the Partnership Management Board.

3. The proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] consolidated group for its [REDACTED] taxable year is [REDACTED].

4. The Forms 872, RARs, etc. should be filled out as they normally would identifying [REDACTED] as the taxpayer and signed by either of the partners in [REDACTED] or an authorized member of the Partnership Management Board.

FACTS

█████ filed a consolidated income tax return for █████ with it as the consolidated parent. During █████ and █████ all of the stock of █████ was owned by █████, a Delaware █████ that filed a partnership return. In turn, █████ was wholly owned by two United Kingdom corporations, one wholly owned by the other. A series of restructuring transactions commenced in █████, and ended in █████ that resulted in the creation of █████ (with the two UK corporations being the two partners) and its becoming the sole owner of █████. █████ elected under the check the box regulations to be treated as a corporation for federal tax purposes as of █████. Attached is the taxpayer's memorandum identifying the entities and describing the of the transactions. Also attached are organizational charts showing the organizational structure before and after the restructuring. █████ was merged, downstream, into one of its subsidiaries in █████ and went out of existence.

The partnership agreement provides that either or both of the partners can bind the partnership. It further provides that the partners can appoint a Partnership Management Board that would have the authority to perform all functions and carry out all duties of the partners. It is our understanding such a board was created. If so, it is likely that a member of the board will be signing agreements relating to the audit. We suggest obtaining the documents giving the board its authority to handle █████'s federal tax matters specifically, or in absence of such specific grant of authority, general authority to conduct the general day-to-day business affairs of the partnership.

ANALYSIS

Issues 1 and 2

We believe the series of transactions whereby █████ becomes the new consolidated parent constitutes a reverse acquisition. See Treas. Reg. § 1.1502-75(d)(3)(i). As a result, the █████ group did not cease on the date of the acquisition but continued in existence with █████ as the common parent, pursuant to Treas. Reg. § 1.1502-75(d)(3)(i). As a result, █████ became an alternative agent (under Treas. Reg. § 1.1502-77T(a)(4)(iv)), and also stepped into the shoes of the common parent, for the █████'s taxable year. Accordingly, █████ is the proper entity to sign Forms 872, RARs, etc. The forms should be prepared in the format given above. Pursuant to the partnership agreement either one of the partners or an authorized member of the Partnership Management Board could sign the forms. If so, it is likely that

a member of the board will be signing agreements relating to the audit. We suggest obtaining the documents giving the board its authority to handle [REDACTED]'s federal tax matters specifically, or in absence of such specific grant of authority, general authority to conduct the general day-to-day business affairs of the partnership.

Issues 3 and 4

Since [REDACTED] is the consolidated parent for [REDACTED] this presents no real issue regarding format of reports or forms, nor the proper party to sign agreements. Again, the partnership agreement provides that either one of the partners or an authorized member of the Partnership Management Board could sign the forms. As stated above, it is likely that a member of the board will be signing agreements relating to the audit. The suggestion made above applies with equal force here.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

15/ George W. Bezold
GEORGE W. BEZOLD
Attorney

Attachments
Memorandum
Organizational Charts